

Date of decision: 19-4-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J  
(19-4-1996)

Mr. M. R. Shah for the petitioner.  
Mrs. Hansa Punani for respondent No.1  
Mr. D. D. Vyas for respondent No.2  
Ms. Mamta R. Vyas for respondent No.3  
Mr. D. A. Bambania for respondent No.5  
Respondent No.4 served.

ORAL JUDGMENT:

Respondent No.6 is neither necessary nor proper party. Hence respondent No.6 is ordered to be deleted.

Rule. Mrs. Hansa Punani waives service of rule on behalf of respondent No.1. Mr. D. D. Vyas waives service of rule on behalf of respondent No.2. Ms. Mamta R. Vyas waives service of rule on behalf of respondent No.3. Mr. D. A. Bambania waives service of rule on behalf of respondent No. 4 and 5. With the consent of the parties the matters is taken up for final hearing.

2. The petitioner was appointed as assistant teacher on 7-12-1987 in respondent No.1 School in Junagadh District. Under his order dated 7-3-1994 respondent No.4 declared the petitioner as surplus teacher in respondent No.1 school. The petitioner felt aggrieved by the said order, and approached the Gujarat Secondary Education Tribunal at Ahmedabad by filing application No.381 of 1994. The contention of the petitioner was that he has wrongly been declared surplus from the school by respondent No.4. The petitioner also prayed for interim relief in application No.381 of 1994. The Tribunal vide its order dated 23rd September, 1994 considered the matter of grant of interim relief and granted interim relief in favour of the petitioner. The Tribunal found prima facie case in favour of the petitioner and ordered that in the meanwhile the petitioner will continue as surplus teacher in respondent No.1 school, and he shall be allowed to work and shall be paid salary as a surplus employee.

3. The petitioner's native place is in District Amreli. He made statement before the Tribunal that without prejudice to his rights and contention, in a spirit of accommodation he is prepared to accept position as surplus teacher if he is absorbed at his own native place, at Zaverchand Meghani Higher Secondary School, Bagasara, where, according to him, a vacancy in his subject was available. On this statement the Tribunal made some observations. The District Education Officer, Junagadh, sent letter dated 2-12-1994 to the District Education Officer, Amreli for passing necessary orders for absorption of the petitioner at respondent No.2 school. Respondent No.2 published advertisement in the local newspaper dated 10-2-1995 inviting application to fill up vacant post. Challenging the advertisement the petitioner again approached the Tribunal by filing application No.219 of 1995. This application has been dismissed by the Tribunal by its order dated 22-12-1995. Hence the present writ petition.

4. The writ petition has been contested by the respondents. Respondent No.6 appears to have been appointed on the vacant post at respondent No.2 school. He entered caveat in this writ petition. Respondent No.2 filed reply to the writ petition. Other respondents have not filed any reply and orally contested the writ petition.

5. Learned counsel for the petitioner admits that he does not challenge the order annexure-E dated 12-12-1995 passed in application No.219 of 1995 in the present writ petition. I may state here that in the index date of this order has been shown as 12-12-1995. In the list of events same date has been shown. In the memo of the writ petition the petitioner has given the date of the order to be 22-12-1995, and annexure-E it has been mentioned as 12-12-1995. In the writ petition at one place the date has been given as 12-12-1995. The counsel for the petitioner should be careful to give all the details of the facts correctly. Learned counsel for the petitioner further admits that he is unable to say whether any post is lying vacant or not in Junagadh District. The parties also are in agreement that the appointment made in pursuance to the advertisement dated 10-2-1995 has been cancelled.

6. The petitioner in the writ petition prayed for direction to respondent No.5 to pass order absorbing him at respondent No.2 & 3 school as surplus teacher in pursuance the letter / order of the District education Officer, Junagadh, dated 2-12-1994 to the D.E.O., Amreli. Further prayer has been made that respondents No.2 and 3 may be restrained from making any new appointment of Assistant Teacher in the subject of the petitioner, i.e. English for which advertisement was given on 10-2-1995. So far as the second prayer is concerned, it does not survive for the reason that in pursuance of the advertisement referred above, respondent No. 6 has been appointed and his appointment is cancelled. If it is so, then there may be fresh advertisement for appointment. The first prayer made by the petitioner is also difficult to accept. The petitioner has not acquired any right whatsoever for absorption at respondent No.2 and 3 school. The right which the petitioner claims on the basis of the letter dated 02-12-1994 of the District Education Officer, Junagadh, is not available to him. The District Education Officer, Junagadh, under misconception or misconstrued the order of the Tribunal passed in application No.381 of 1994 has written the said letter. The District Education Officer Junagadh, has failed to consider that the petitioner himself is contesting that he has wrongly been declared surplus from respondent No.1 school and this contention of petitioner has

been prima facie accepted by the Tribunal and interim relief has been granted. When the petitioner himself is questioning the action of the District Education Officer, Junagadh, who declared him surplus at respondent No.1 school, how he could have claimed for his absorption in another district? The Tribunal in the application No.381/94, while deciding the application for interim relief made some observations on the petitioner's own desire, but no order has been passed giving any direction in this respect nor it could have been done and the reason is obvious. It appears that the petitioner has got this letter from the office of the District Education Officer Junagadh. The letter is wholly based on misconstruction of the order of the Tribunal as well as on incorrect facts. The subject under which the said letter is issued is also incorrect. The petitioner could not have been considered to be surplus because that matter is subjudice before the Tribunal in which interim relief has been granted in his favour. Further the District Education Officer, Junagadh, in letter dated 02-2-1994 mentioned, "as per direction of the Gujarat Secondary Education tribunal at Amreli in Application No.381 of 1994 and the consent of M.K. Madar, surplus teacher, and the order dated 17-6-1994 of this office is hereby cancelled". In the body of the letter it is further mentioned as under:

"That as per the direction /observation made by the Gujarat Secondary Education Tribunal at Ahmedabad, you are hereby requested to pass appropriate order to absorb him at Sanghvi Vidyalay, Bhagasra of your District".

From the letter dated 02-12-1994 it further transpires that the earlier order dated 17-6-1994 has been cancelled by the District Education Officer, Junagadh. It is not in dispute that the order dated 17-6-1994 is the order under which the petitioner was declared surplus from respondent No.1 school. When this order of declaring the petitioner as surplus from respondent No.1 school has been withdrawn, then the petitioner no more remains surplus teacher. Even the application No.381 of 1994 may not survive because the order declaring the petitioner as surplus has been cancelled.

7. The whole claim of the petitioner is based on misconception. The petitioner wants to take benefit of some observations made by the Tribunal which he himself had invited. There was no direction by the Tribunal as projected and lastly when the District Education Officer Junagadh himself has cancelled the order under which he declared the petitioner as surplus in respondent No.1's school, no claim whatsoever could have been made by the petitioner for his absorption by the school of respondents

No.2 and 3 in Amreli District. The letter of the District Education Officer dated 2-12-1994 is difficult to understand. The question of absorption would have been there only in case the petitioner is declared surplus. When the District Education Officer, Junagadh, himself has withdrawn his order dated 17-6-1994 I fail to see how he could have recommended for the absorption of the petitioner in another school and that too in a different district. It may be a case of favoritism extended by the D.E.O. for the reasons best known to him.

8. In the result this special civil application fails and the same is dismissed. No order as to costs.